

File

**BEFORE THE**  
**STATE OF WISCONSIN**  
**DIVISION OF HEARINGS AND APPEALS**

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In the Matter of the Noncomplying	)	
Private Water Supply, Constructed by	)	
Gohlke Well Drilling on Property	)	IH-95-04
Located in the Town of Wheatland,	)	
Kenosha County, Wisconsin	)	

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**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

In May, 1994, a private water supply was constructed for John Kirchoff by Gohlke Well Drilling. The Department of Natural Resources inspected this well and determined that it was pumping sand. Mr. Gohlke returned to the property to correct the problem; however, the Department alleges the well is still producing some sand.

On January 26, 1995, the Department of Natural Resources issued Order No. SED-94-11 to William Gohlke ordering him to properly abandon the replacement well and submit well reports within ten days of the effective date of the order. The Department received a request for hearing dated February 14, 1995 from William Gohlke requesting a public hearing on the order.

Pursuant to due notice, a hearing was scheduled for April 20, 1995, at Bristol, Wisconsin, before Mark J. Kaiser, Administrative Law Judge.

In accordance with secs. 227.47 and 227.53(12)(c), Stats., the PARTIES to this proceeding are certified as follows:

William J. Gohlke  
Well Drilling and Complete Water System  
19400 38th Street  
Bristol, Wisconsin 53104-9740

Wisconsin Department of Natural Resources, by

Milton L. Donald, Attorney  
P. O. Box 7921  
Madison, Wisconsin 53707-7921

At the outset of the hearing, the parties and administrative law judge visited the Kirchoff property. After an inspection, Mr. Gohlke acknowledged that the subject well is pumping sand. No evidence was presented at the hearing. The following findings of facts are based on the stipulation of the parties and the file of the Department of Natural Resources. The order is entered pursuant to the stipulation of the parties.

### FINDINGS OF FACT

1. John Kirchoff owns the property located at 7910 352nd Avenue, Burlington, Wisconsin. The legal description of the property is SE 1/4 of the SW 1/4, Section 10, Township 1N, Range 19E.
2. On May 30, 1994, a private water supply, as defined in sec. NR 812.07(78), Wis. Adm. Code, was constructed for John Kirchoff by Gohlke Well Drilling, Inc., now known as Gohlke Well Drilling and Complete Water Systems.
3. Kevin Shurilla, private water supply specialist for the Department of Natural Resources (Department), inspected the subject well on August 9, 1994 and confirmed that the well was pumping sand.
4. On September 13, 1994, the Department informed William Gohlke that the well on the Kirchoff property was producing sand and ordered him to correct the problem within 30 days.
5. William Gohlke did return to the property within the 30 days and attempted to correct the problem; however, the well is still producing some sand. At the time of his visit, Mr. Gohlke also installed a six gallon per minute flow restrictor on the pump discharge pipe. John Kirchoff informed the Department that he does not consider this an adequate water supply.
6. Section NR 812.07(1), Wis. Adm. Code, defines "adequate water supply" as "a water supply which has a well yield and the pump capacity to provide the quantity and quality, where obtainable, according to sec. NR 812.06, of water necessary for human or sanitary use, or for the preparation of food products and other purposes for which the water is intended to be used."

### CONCLUSIONS OF LAW

1. The well constructed by Gohlke Well Drilling and Complete Water Systems on the Kirchoff property on May 30, 1994, does not comply with sec. NR 812.10(7), Wis.

Adm. Code, which requires that a "well shall be pumped and developed until water is practically clear and free of sand."

2. Pursuant to sec. NR 812.10(8), Wis. Adm. Code, when a well driller has constructed a well which is not initially in compliance with the requirements of Ch. NR 812, Wis. Adm. Code, the well driller shall pay all costs for bringing the well into compliance, including abandonment costs, other than those costs that would have been charged for an initial complying well.

3. Pursuant to sec. 227.43(1)(b), Stats., the Division of Hearings and Appeals has authority by its Administrative Law Judge to issue the following order.

#### ORDER

Gohlke Well Drilling and Complete Water System shall construct a well on the Kirchoff property which complies with all requirements of Chapter NR 812, Wis. Adm. Code, by June 20, 1995, and shall properly abandon the existing well constructed in May, 1994 pursuant to the requirements of Chapter NR 812, Wis. Adm. Code, by June 30, 1995, and submit any required reports.

Dated at Madison, Wisconsin on May 16, 1995.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
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By Mark Kaiser  
MARK J. KAISER  
ADMINISTRATIVE LAW JUDGE

## NOTICE

Set out below is a list of alternative methods available to persons who may desire to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with sec. 227.48, Stats., and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any party to this proceeding adversely affected by the decision attached hereto has the right within twenty (20) days after entry of the decision, to petition the secretary of the Department of Natural Resources for review of the decision as provided by Wisconsin Administrative Code NR 2.20. A petition for review under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.

2. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Department of Natural Resources a written petition for rehearing pursuant to sec. 227.49, Stats. Rehearing may only be granted for those reasons set out in sec. 227.49(3), Stats. A petition under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.

3. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefor in accordance with the provisions of sec. 227.52 and 227.53, Stats. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (2) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Since the decision of the Administrative Law Judge in the attached order is by law a decision of the Department of Natural Resources, any petition for judicial review shall name the Department of Natural Resources as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of secs. 227.52 and 227.53, Stats., to insure strict compliance with all its requirements.